



Charles N. Kahn III
President and CEO

March 31, 2023

The Honorable Anne Milgram
Administrator
Drug Enforcement Administration
US Department of Justice
Attention: DEA Federal Register Representative/DPW
8701 Morrissette Drive
Springfield, Virginia 22152

Dear Administrator Milgram:

Re: Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation; Docket No. DEA-407

Dear Administrator Milgram:

The Federation of American Hospitals (FAH) is the national representative of more than 1,000 leading tax-paying hospitals and health systems throughout the United States. FAH members provide patients and communities with access to high-quality, affordable care in both urban and rural areas across 46 states, plus Washington, DC, and Puerto Rico. Our members include teaching, acute, inpatient rehabilitation, behavioral health, and long-term care hospitals and provide a wide range of inpatient, ambulatory, post-acute, emergency, children's, and cancer services. The FAH appreciates the opportunity to submit comments to the Drug Enforcement Administration (DEA) regarding its proposed rule on *Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In Person Medical Evaluation*; March 1, 2023 (88 Fed. Reg. 12,875).

Today, more than ever, there is an imperative national need for practitioners to have the ability to provide behavioral health services via telehealth, including services that involve controlled substances. Ensuring that individuals across the United States have timely access to behavioral health services is a key objective of President Biden's Mental Health Strategy. Yet, the behavioral health workforce across the United States (US) is experiencing severe shortages

(more than half of US counties do not have a psychiatrist¹), which could compromise the laudable and important goals of the Mental Health Strategy unless virtual care is optimized via telehealth services.

Evidence of the need for access to behavioral health services was underscored by a recent Kaiser Family Foundation (KFF) updated report on *The Implications of COVID-19 for Mental Health and Substance Use*.² The report noted that as the end of the COVID-19 public health emergency (PHE) nears, “many people continue to grapple with worsened mental health and well-being and face barriers to care.” The report identified the following key takeaways:

- Symptoms of anxiety and depression increased during the PHE and are more pronounced among individuals experiencing household job loss, young adults, and women. Adolescent females have also experienced increased feelings of hopelessness and sadness compared to their male peers.
- Deaths due to drug overdose increased sharply across the total population coinciding with the PHE – and more than doubled among adolescents. Drug overdose death rates are highest among American Indian and Alaska Native people and Black people.
- Alcohol-induced death rates increased substantially during the PHE, with rates increasing the fastest among people of color and people living in rural areas.
- After briefly decreasing, suicide deaths are on the rise again as of 2021. From 2019 to 2021, many communities of color experienced a larger growth in suicide death rates compared to their White counterparts. Additionally, self-harm and suicidal ideation has increased faster among adolescent females compared to their male peers.
- Several changes have been implemented in the delivery of mental health and substance use services since the onset of the PHE, including the utilization of telehealth, steps to improve access to treatment for opioid use disorders, expansion of school-based mental health care, and the rollout of the 988 crisis line. As the PHE declaration comes to an end, it is possible that some of these changes will be interrupted.

In light of the elevated behavioral health needs identified by the KFF study and to promote access to behavioral healthcare, the FAH urges the DEA to implement the following recommendations in the final rule regarding prescribing controlled substances via telehealth:

¹ <https://www.aamc.org/news-insights/growing-psychiatrist-shortage-enormous-demand-mental-health-services>.

² Nirmita Panchal, Heather Saunders, Robin Rudowitz, and Cynthia Cox, *The Implications of COVID-19 for Mental Health and Substance Use* (KFF, March 20, 2023): [The Implications of COVID-19 for Mental Health and Substance Use | KFF](#).

- Eliminate the idea that an in-person visit is necessary prior to a telehealth visit for prescribing controlled substances and pursue other pathways to prevent inappropriate access to medication via the internet.
- Permit flexibility regarding waiver of the in-person visit until the proposed rule is finalized, or at a minimum through calendar year 2023 – this could be accomplished by extending significantly the proposed 30-day timeframe. This would ensure that patients do not lose access to necessary services via telehealth while also allowing the DEA and industry stakeholders time to evaluate potential alternatives to the in-person medical evaluation requirement without affecting access to care immediately after the PHE expires.
- Use the DEA’s existing PHE authority to continue to waive the in-person requirement for buprenorphine for opioid use disorder treatment for the duration of the ongoing opioid epidemic PHE. This PHE does not have the COVID-19 May 11, 2023, end date.
- Per authority of the Ryan Haight Act of 2008, issue a proposed rule establishing a special telemedicine registration process for prescribing controlled substances so that providers and patients have an opportunity to utilize telehealth to prescribe controlled substances even after the PHE flexibilities have expired.
- Grant permanent exceptions for practitioners in states that have medical licensing reciprocity requirements to file separate DEA registration in any state a provider practices under the reciprocity arrangement to ensure appropriate prescribing for patients through telehealth services.

Thank you for the opportunity to comment on the proposed rule. If you have any questions, please contact me or a member of my staff at 202-624-1534.

Sincerely,

